

REMARKS

The foregoing amendments to the claims are presented in order to point out more particularly and to claim more distinctly the subject matter of Applicants' invention. For the reasons discussed below, these amendments add no prohibited new matter to the specification.

I. Discussion of the Claimed Invention

Applicants have discovered a significant method for the analysis of exhaled breath components. The specification provides data to show that this method can obtain breath samples from the respiratory tract below the glottis.

Respectfully, Applicants' invention represents a novel apparatus and method, and reconsideration and timely allowance of the pending claims is requested.

II. Summary of the Office Action

Formal Drawings are requested.

A check for minor errors in the specification is requested.

Claims stand objected to under 37 CFR 1.75(g), for being in random order.

Claim 3 stands objected to under 37 CFR 1.75(c), as being of improper format for failing to further limit the subject matter of the previous claim.

Claims 1-20 stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-11 of U.S. Patent No. 5,673,690.

Claims 1-20 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite.

III. Summary of the Response to the Office Action

Formal drawings will be supplied at such a time as the pending claims have been allowed. The specification has been amended to correct minor errors. Applicants have canceled the previously pending claims and added substantially similar new claims in order to group related claims together. Support for the new claims can be found throughout the specification. Claim 1 (substantially presented now as claim 21) has been rewritten such that dependent claim 3 (now presented substantially as claim 24) appropriately limits the subject matter of the independent claim to which it refers. Applicants have amended claims 1 and 10 (now corresponding to claims 21 and 35, respectively) to more clearly define the subject matter of their invention. These amendments add no prohibited new matter to the specification. Accordingly, claims 21-43 are pending for consideration. Applicants also have filed a terminal disclaimer herewith.

IV. The Rejection under the Judicially Created Doctrine of Obviousness-Type Double Patenting

Claims 1-20 stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-11 of U.S. Patent No. 5,673,690.

Respectfully, Applicants believe that the Office Action had intended to refer to U.S. Patent No. 5,795,787. Without acquiescing in the basis for the rejection in light of U.S. Patent No. 5,795,787, and in the interest of furthering prosecution, Applicants have filed a terminal disclaimer herewith. Accordingly, Applicants respectfully request that the rejections under the judicially created doctrine of obviousness-type double patenting be withdrawn.

V. The Rejection Under 35 U.S.C. § 112, Second Paragraph

Claims 1-20 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. Without acquiescing in the rationale set forth in the Office Action, and in order to expedite prosecution, Applicants have amended the claims to more clearly define the claims. Applicants have amended claims 1 and 10 (corresponding to new claims 21 and 35) such that "vellum" has been replaced by "velum" in the claims. Applicants have also amended claim 1 (now substantially presented as claim 21) such that the step of "collecting" has been removed in order more clearly define the further limitation in claim 3 (now corresponding substantially to claim 24). Applicants respectfully submit that claims 21-43 fully comply with the requirements of

35 U.S.C. § 112, second paragraph. Accordingly, Applicants respectfully request that the rejections under 35 U.S.C. § 112, second paragraph, be withdrawn.

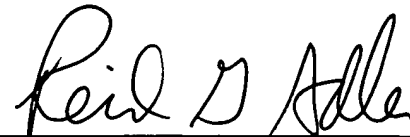
VI. Conclusion

In view of the foregoing, Applicants respectfully request reconsideration and the timely allowance of the pending claims. Should the Examiner feel that there are any issues outstanding after consideration of this response, the Examiner is invited to contact Applicants' undersigned representative to expedite prosecution.

If there are any other fees due in connection with the filing of this response, please charge the fees to our Deposit Account No. 50-0310. If a fee is required for an extension of time under 37 C.F.R. § 1.136 not accounted for above, such an extension is requested and the fee should also be charged to our Deposit Account.

Respectfully submitted,

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